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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/829,098	04/21/2004	Takahiro Tokunaga	4041K-000197	6007
27572	7590	10/19/2005	EXAMINER	
HARNESS, DICKEY & PIERCE, P.L.C. P.O. BOX 828 BLOOMFIELD HILLS, MI 48303			FORD, JOHN K	
			ART UNIT	PAPER NUMBER
			3753	

DATE MAILED: 10/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/829,098

Applicant(s)

TOKUNAGA ET AL.

Examiner

John K. Ford

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 7/27/05
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 6-10, 18-20 is/are pending in the application.
- 4a) Of the above claim(s) 8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 6, 7, 9, 10 and 18-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 7/27/05 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 7/27/05
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Applicant's election of Group I, drawn to a combined heating and cooling system, without traverse, is acknowledged. Within that Group, applicant has further elected the species of Figures 1-5, without traverse, and has identified claims 1, 6, 7, 9 and 10 as readable on the elected species. Accordingly claims 2-5, 8 and 11-17 are withdrawn from consideration here.

Counsel in his remarks requests the Examiner to either allow claim 10 or make the current rejection non-final, ostensibly because claim 10 was never fairly treated on the merits in the last office action. In the summary of the previous office action, found on PTOL-326, it clearly stated that claim 10 was rejected. However, because of a typographical error in the caption to the claims enumerated for rejection on page 2 of the last office action wherein the caption stated claims "1, 6, 7, 9 and" (emphasis supplied) was typed, instead of claims "1, 6, 7, 9 and 10", applicant asserts that no art was cited against claim 10.

It is submitted that most patent practitioners would have understood the nature of the typographical error (wherein the word "and" came after "9" and not before it), particularly given the similarity of claims 9 and 10 in simply defining the two extreme positions of the fan casing orientation (either full cooling or full heating). The opportunistic analysis suggests that no notice was given as to the grounds of rejection for claim 10, and the Examiner completely disagrees with it. Any reasonably informed reader would deduce what had happened from the facts given. It is also noted in passing that the Examiner often encounters minor typographical errors in applicant's own responses and generally ignores them when any reasonable reading of the

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response would render applicant's intent clear or telephones counsel for clarification when it seems appropriate. Likewise, counsel has telephoned the Examiner in the past to warn the Examiner that a supplemental response is forthcoming and the Examiner has delayed reconsideration of an application until the supplemental response is of record. The Examiner hopes in the future applicant will extend the Examiner the same courtesy and telephone the Examiner to discuss some ambiguity or misunderstanding and thereby avoid protracting the prosecution with unnecessary arguments such as the one being made here with respect to claim 10.

Applicant has submitted a new piece of prior art of Denso origin (JP 2001-315526), the assignee of the current application, that was submitted without a certification 37 CFR 1.97(e), and it is relevant and material to both the originally presented claims and those now presented by the current amendment. Given the lack of certification, it does not appear that this prior art was first cited in a communication from a foreign patent office within three months of the filing of the IDS here and/or was unknown to individuals designated under 37 CFR 1.56 (c) within the required time frame.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claims 1, 6, 7, 9, 10 and 18-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In elected Figure 1-5, the heat exchangers do not “encircle” the blower. The term “encircle” means “to form a circle around; surround or to move or go around completely; make a circuit of”. Clearly heat exchangers 4 and 5 do not encircle the blower. Measured angularly in Figure 1 relative to the axis of the blower, heat exchangers 4 and 5, taken together, span less than half of the angular distance around the fan – hence they do not encircle it. Moreover, the heating and cooling units are not parallel to each other as claimed. They are clearly angled relative to each other, at an obtuse angle. Claim 1 is not descriptive of the elected species of Figures 1-5, hence fails to particularly point out and distinctly claim the subject matter which applicant regards as the invention in a manner that permits the reader to comprehend what is being claimed with the requisite clarity.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 1, 6, 7, 9 and **10** and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combined teachings of GB 2121879, JP 2001315526 and either one of JP 59-195413 or DT 3229866.

JP '413 shows an air conditioner with a blower 13, an air conditioner casing 10, cooling unit 12, heater 11, an airflow rate adjustment means 19 and an air mix chamber 20. The airflow rate adjustment means 19 changes the flow direction of air discharged from blower 13 to proportion it between the cold air passage 17 containing cooling unit 12 and the warm air passage 18 containing the heater unit 11. Blower 13 does not have a movable casing.

Similarly, DT '866 has a blower 5, air conditioner casing 1, cooling unit 3, heater 2, airflow rate adjustment means 7 and an air mix chamber (in the vicinity of reference numeral 32). The airflow rate adjustment means 7 changes the flow direction of air discharged from blower 5 to proportion it between the cold air passage containing cooling unit 3 and the warm air passage (adjacent entrance 17) containing the heater unit 2. Blower 5 does not have a movable casing.

GB 2121879, in Figure 2, teaches a blower of the type disclosed by JP '413 and by DT '866 (i.e., a centrifugal type) in which a position of the blower casing 14 is changed by moving it in the direction of the double-headed arrows to vary the proportion of air discharged into passage V1 and V2. At one extreme casing position, all of the air

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would be discharged into V1 and at the other extreme casing position; all of the air would be discharged into V2.

JP 20011315526 (Figure 8) teaches arranging a plurality of heat exchangers 30, 31 and 32 around the axis 15a of a blower 15 and equidistantly from the blower.

To have replaced the blower/damper combination of JP '413 (i.e. elements 13 and 19) with the blower/rotary casing of GB 2121879 (shown in Figure 2), i.e. discharging passage 12 of GB 2121879 into passage 17 of JP '413 and discharging passage 13 of GB 2121879 into passage 18 of JP '413 would have been obvious to one of ordinary skill in the art because GB '879 advantageously teaches it takes up only little space and it's specially short in length (page 2, lines 26-27). Furthermore, to have arranged the heat exchangers 11 and 12 in JP '413 equidistantly from the blower to improve airflow by making the fluid resistances approximately equal would have been obvious from the teaching of JP 20011315526 (Figure 8 teaching arranging a plurality of heat exchangers 30, 31 and 32 arranged equidistantly around the axis 15a of a blower 15).

Likewise, to have replaced the blower/damper combination of DT '866 (i.e. elements 5 and 7) with the blower/rotary casing of GB 2121879 (shown in Figure 2), i.e. discharging passage 12 of GB 2121879 into the cooler of DT '866 and discharging passage 13 of GB 2121879 into the heater of DT '866 would have been obvious to one

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of ordinary skill in the art because GB '879 advantageously teaches it takes up only little space and it's specially short in length (page 2, lines 26-27). Furthermore, to have arranged the heat exchangers 2 and 3 in DT '866 equidistantly from the blower to improve airflow by making the fluid resistances approximately equal would have been obvious from the teaching of JP 20011315526 (Figure 8 teaching arranging a plurality of heat exchangers 30, 31 and 32 arranged equidistantly around the axis 15a of a blower 15).

One of ordinary skill seeking to design a compact air conditioning system for a small vehicle such as Honda Civic or even smaller vehicle space such as a rear air conditioner unit in a mini-van would have had the requisite motivation to make the substitution for the purpose of advantageously obtaining a more compact air conditioner thereby freeing up space in the passenger compartment.

Applicant's submission of an information disclosure statement under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p) on July 27, 2005 prompted the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 609.04(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to John Ford at telephone number (571) 272-4911.



JOHN K. FORD
Primary Examiner